



# Commonwealth of Massachusetts State Ethics Commission

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**SUFFOLK, ss.**

**COMMISSION ADJUDICATORY  
DOCKET NO. 670**

## **IN THE MATTER OF MICHAEL J. D'AMICO**

### **DISPOSITION AGREEMENT**

This Disposition Agreement is entered into between the State Ethics Commission and Michael J. D'Amico pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, § 4(j).

On April 17, 2002, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by D'Amico. The Commission has concluded its inquiry and, on September 5, 2002, found reasonable cause to believe that D'Amico violated G.L. c. 268A, § 19.

The Commission and D'Amico now agree to the following findings of fact and conclusions of law:

#### *Findings of Fact*

1. D'Amico was Quincy's Ward 4 City Councillor between January 1996 and January 2002.
2. D'Amico purchased a home at 57-59 Penn Street in Quincy in March 1999.
3. Subsequent to D'Amico's purchase of 57-59 Penn Street, Lappen Auto Supply Company, Inc. ("Lappen"), which owned commercial property abutting D'Amico's Penn Street property, petitioned the Quincy Zoning Board of Appeals for "set back relief through a variance and a Special Permit to construct in a flood plain." Lappen wanted to construct a new warehouse that would link the two buildings already sited on its property.
4. Four letters supporting Lappen's application were submitted to the zoning board, one from D'Amico. D'Amico's May 11, 1999 letter was written on city council stationery.
5. Councillor D'Amico's letter recommended six "conditions for consideration before granting Lappen Auto Supply[s]" application. One of the six conditions suggested by Councillor D'Amico was that "[l]andscape, retaining walls and fencing plan for Penn Street abutters be directed and agreed upon by Building Inspector and abutters." D'Amico's letter closed: "As the Ward Four Councillor, I would have no objections to the Zoning Board of Appeals granting the request, providing the above six conditions are agreed to." D'Amico signed the letter "Michael J. D'Amico, Ward Four Councillor."
6. The Zoning Board of Appeals did not adopt Councillor D'Amico's recommendation that landscaping, retaining walls and fencing be provided subject to the agreement of Penn Street abutters. The board did, though, condition its grant on Lappen's submission to the building inspector for review and approval of "a reasonable landscape plan," which was to include "the southwesterly end of the lot." (Penn Street abuts the southwesterly end of Lappen's lot.) As was customary, the landscape plan submitted to the building department included only landscaping slated for Lappen's property; it did not include improvements for abutters.

7. Quincy city ordinance 17.36.070 requires that businesses adjacent to residential districts screen abutting properties. The ordinance does not, though, as D'Amico requested, require that those businesses construct retaining walls or provide landscaping services other than screening, nor does it require that the screening provided be subject to abutters' agreement.

8. In August 1999, at a cost of \$6,700 to Lappen, a landscaper performed work at D'Amico's property. The cost for the work performed on Councillor D'Amico's property was comparable to the cost borne by Lappen to landscape a second abutter's property.

#### *Conclusions of Law*

9. Section 19 of G.L. c. 268A prohibits municipal employees from participating in their official capacity in particular matters in which, to their knowledge, they or an immediate family member have a financial interest.

10. As a city councillor, D'Amico was, in spring 1999, a municipal employee as that term is defined in G.L. c. 268A, § 1.

11. The Zoning Board of Appeals' consideration of Lappen Auto Supply's petition for a variance and a special permit was a particular matter.

12. By submitting the above-referenced letter to the Zoning Board of Appeals on city council stationery, and signing the letter as Ward Four Councillor, D'Amico participated, in his official capacity, in that particular matter.

13. D'Amico had a financial interest in the Zoning Board of Appeals decision because one of the requested "conditions" submitted by D'Amico would have obligated Lappen to pay for landscaping, retaining walls and fencing for D'Amico's property, and would have given D'Amico a role in deciding what type of landscaping, retaining walls and fencing would be provided. In addition, the work would have mitigated any damage to D'Amico's property value precipitated by Lappen's expansion.

14. D'Amico knew of his financial interest in the Zoning Board of Appeals matter when he submitted his letter to the board.

15. Therefore, by submitting a letter to the Zoning Board of Appeals in his official capacity, D'Amico participated in a particular matter in which he had a financial interest, thereby violating § 19.

#### *Resolution*

In view of the foregoing violation of G.L. c. 268A by D'Amico, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by D'Amico:

(1) that D'Amico pay to the Commission the sum of \$1,250.00 as a civil penalty for violating G.L. c. 268A, § 19;

(2) that he waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

**DATE: December 2, 2002**